

Message Text

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PAGE 01 STATE 095208
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DRAFTED BY L/M:GALEHNER:JBM

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FM SECSTATE WASHDC

TO AMEMBASSY MEXICO PRIORITY

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E.O. 11652: N/A

TAGS: CPRS, US, MX

SUBJECT: EXTRADITION TREATY NEGOTIATIONS - MEXICO

REF: (A) MEXICO 5195, (B) MEXICO 5838

1. EMBASSY LEGAL ADVISER GAITHER IS AUTHORIZED TO BEGIN NEGOTIATIONS ON NEW TREATY WITH GOM ON APRIL 17. DEPARTMENT OF JUSTICE OFFICIALS WILL NOT BE ABLE TO ATTEND NEGOTIATING SESSION ON SUCH SHORT NOTICE. DEPARTMENT ATTORNEY ADVISER MAY BE AVAILABLE TO GO TO MEXICO FOR SHORT PERIOD IF DETAILS NEED TO BE CLARIFIED. HOWEVER, IT IS DEPARTMENT'S VIEW, BASED ON REPORTS IN REFS A AND B, THAT THERE ARE NO MAJOR DIFFERENCES BETWEEN THE TWO SIDES AND THAT NEGOTIATIONS CAN BE COMPLETED BY EMBASSY PRIOR TO MAY 4 OR 5.

2. EMBASSY REQUESTED TO KEEP DEPARTMENT FULLY INFORMED OF PROGRESS ON NEGOTIATIONS. DEPARTMENT IS PREPARED TO BACK-UP EMBASSY EFFORTS.

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PAGE 02 STATE 095208

3. RE ROSENZWEIG-DIAZ'S COMMENTS REPORTED IN REF A, PARA 2, DEPARTMENT MAKES FOLLOWING COMMENTS.

(A) ARTICLE 1, PARA 1: TERM DETENTION ORDER IS INCLUDED IN U.S. MODEL DRAFT TO COVER SITUATIONS WHERE COURTS ISSUE DETENTION ORDER IN LIEU OF ARREST WARRANTS. FOR EXAMPLE,

STATE OF FLORIDA ISSUES AN "ALIAS CAPIAS" INSTEAD OF AN ARREST WARRANT WHEN A FUGITIVE HAS BEEN CONVICTED OF A CRIME AND THEN FAILS TO SHOW FOR SENTENCING OR TO SERVE THE SENTENCE. THE TERM "DETENTION ORDER" IS DESIGNED TO COVER THOSE INSTRUMENTS ISSUED BY A COURT WHICH GIVE AUTHORITY TO LAW ENFORCEMENT OFFICIALS TO DETAIL AND HOLD A FUGITIVE, WHETHER OR NOT THE INSTRUMENT IS CALLED AN ARREST WARRANT.

(B) ARTICLE 5(2)(A): PHRASE "OPEN COMBAT" HAS BEEN USED IN PREVIOUS EXTRADITION TREATIES TO WHICH U.S. IS A PARTY. IT IS MEANT TO SUGGEST A SITUATION IN WHICH THERE IS AN ACTIVE, HOSTILE ENGAGEMENT OF FORCES AND A HEAD OF STATE IS KILLED IN THE COURSE OF THE FIGHTING. THE EXCEPTION IS DESIGNED TO PROTECT THE REGULAR COMBATANT WHO IS ENGAGED IN OPEN HOSTILITIES.

DEPARTMENT BELIEVES THAT FORMULATION OF ARTICLE 5(2)(A) CAN BE CHANGED TO INCLUDE VISITING HEADS OF STATE BY DROPPING THE PHRASE "OF ONE OF THE CONTRACTING PARTIES". IT IS DEPARTMENT'S UNDERSTANDING THAT VISITING HEAD OF STATE OF COVERED. IF GOM REQUIRES A MORE PRECISE STATEMENT, THEN EMBASSY REQUESTED TO TRANSMIT TEXT FOR DEPARTMENT APPROVAL.

ARTICLE 5(2)(B): DEPARTMENT CAN AGREE TO DROPPING OF "OR LIMITED OFFICIAL USE

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PAGE 03 STATE 095208

THE REQUESTING STATE".

(C) RE ARTICLE 10: DEPARTMENT AGREES TO ADDITION OF "AND LEGALIZED BY THE MEXICAN AUTHORITY IN THE UNITED STATES". DEPARTMENT WOULD APPRECIATE GOM EXPLANATION OF WHAT KIND OF LEGALIZATION THIS WOULD BE AND AN EXPLANATION OF STATEMENT THAT "LEGALIZATION MUST BE MADE BY THE SECRETARY AS OPPOSED TO THE SECRETARIAT."

(D) RE ARTICLES 11(3) AND 12(1) AND (2): IT IS DEPARTMENTS OPINION THAT ARTICLE 11(3) IS INTENDED TO ALLOW THE EXTENSION OF TIME THAT A PERSON MAY BE HELD - UP TO A TOTAL OF 65 DAYS - ON A PROVISIONAL ARREST REQUEST. RE ARTICLE 12 DEPARTMENT WOULD APPRECIATE COMMENTS OF GOM.

(E) RE ARTICLE 15: DEPARTMENT IS PREPARED TO AGREE TO AN ELABORATION OF CRITERIA FOR REQUESTS MADE BY THIRD STATES. REQUEST EMBASSY OFFICER AND GOM DRAFT LANGUAGE AND SUBMIT TO DEPARTMENT FOR REVIEW. DEPARTMENT WOULD SUGGEST FOLLOWING ADDITIONAL LANGUAGE "...TAKING INTO CONSIDERATION THE SERIOUSNESS OF EACH OFFENSE, THE PLACE WHERE THE OFFENSE WAS COMMITTED, THE NATIONALITY OF THE PERSON SOUGHT, THE

DATES UPON WHICH THE REQUESTS WERE RECEIVED."

4. EMBASSY REQUESTED TO PROVIDE DEPARTMENT WITH ANY OTHER
COMMENTS OR QUESTIONS GOM MAY HAVE. CHRISTOPHER

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